

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1998 Revised: _____

Subject: Election of Supreme Court Justices and Judges of a District Court of Appeal

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Bradshaw</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill proposes amending s. 3, Art. V, Fla. Const., and s. 10, Art. V, Fla. Const., to delete the provisions for merit retention of Supreme Court justices and district court of appeal judges and the requirement that each appellate district have at least one justice elected or appointed from that district to the Supreme Court. The bill replaces these merit retention and residency provisions with provisions for election of Supreme Court justices by a vote of the majority of the electors within single-member Supreme Court election districts. The territorial limits of these districts are to be prescribed by general law. At the time he or she is elected, each justice must reside in the election district from which he or she was elected. Each justice will exercise jurisdiction throughout the state, without regard to the district from which the justice was elected.

The bill provides that each district court of appeal judge is to be elected by a majority of the electors within the territorial jurisdiction of his or her court.

If passed by the required vote of the Legislature, this amendment will be submitted to the electors for their approval at the 1998 General Election.

II. Present Situation:

A. Constitutional Amendment Process

Article XI of the Florida Constitution sets forth the various methods of proposing amendments to the State Constitution and the method of approval or rejection of those proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. s. 1, Art. XI, Fla. Const. Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after

the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing. s. 5, Art. XI, Fla. Const. If the proposed amendment is approved by a vote of the electors, it becomes effective as an amendment to the State Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment. *Id.*

B. Current Judicial Selection

Subsection 3(a), Art. V, Fla. Const., provides for the organization of the Supreme Court of Florida. It provides that the Court is to consist of seven justices, with each of the five appellate districts to have at least one justice elected or appointed from the district to the Supreme Court who is a resident of the district at the time of his original appointment or election.

Section 10, Art. V, Fla. Const., provides for the manner of selecting judges and justices. Circuit judges and judges of county courts are elected and re-elected by vote of the qualified electors within the territorial jurisdiction of their respective courts. Sitting Supreme Court justices and district court of appeal judges qualify for retention by a vote of the electors in the general election next preceding the expiration of their term in the manner prescribed by law. If a justice or district court of appeal judge is ineligible or fails to qualify for retention by vote of majority of the qualified electors voting within the territorial jurisdiction of the court voting to retain, a vacancy exists in that office upon the expiration of the term being served by the justice or judge.

Section 11, Art. V, Fla. Const., provides that under such circumstances, the Governor is to fill the vacancy on the Supreme Court or the district court of appeal by appointing a justice or judge. The appointment is to be for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment. The Governor is to appoint one of not fewer than three persons, nor more than six persons nominated by the appropriate judicial nominating commission. The Governor also fills each vacancy on a circuit court or on a county court by appointing a judge. However, these judges must be re-elected at the end of the term, while the justices and district court of appeals judges run for retention.

III. Effect of Proposed Changes:

The bill proposes amending s. 3, Art. V, Fla. Const., to delete the requirement that each appellate district have at least one justice elected or appointed from that district to the Supreme Court. The bill proposes amending s. 10, Art. V, Fla. Const., to delete the provision for merit retention of Supreme Court justices and district court of appeal judges. The bill instead provides that such justices and judges be elected as described below.

The bill further amends s. 10, Art. V, Fla. Const., by providing for election of Supreme Court justices by a vote of the majority of the electors within single-member Supreme Court election

districts. The territorial limits of these districts are to be prescribed by general law. At the time he or she is elected, each justice must reside in the election district from which he or she was elected. Each justice will exercise jurisdiction throughout the state, without regard to the district from which the justice was elected.

The bill further amends s. 10, Art. V, Fla. Const., to provide that each district court of appeal judge is to be elected by a majority of the electors within the territorial jurisdiction of his or her court. Currently, there are 5 district courts of appeal. s. 35.01, F.S. They are geographically composed as follows:

First District -- Circuits 1, 2, 3, 4, 8, and 14. s. 35.02, F.S.

- The 1st circuit is composed of Escambia, Okaloosa, Santa Rosa, and Walton Counties. s. 26.021(1), F.S.
- The 2nd circuit is composed of Leon, Gadsden, Jefferson, Wakulla, Liberty, and Franklin Counties. s. 26.021(2), F.S.
- The 3rd circuit is composed of Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties. s. 26.021(3), F.S.
- The 4th circuit is composed of Clay, Duval, and Nassau Counties. s. 26.021(4), F.S.
- The 8th circuit is composed of Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties. s. 26.021(8), F.S.
- The 14th circuit is composed of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties. s. 26.021(14), F.S.

Second District -- Circuits 6, 10, 12, 13, and 20. s. 35.03, F.S.

- The 6th circuit is composed of Pasco and Pinellas Counties. s. 26.021(6), F.S.
- The 10th circuit is composed of Hardee, Highlands, and Polk Counties. s. 26.021(10), F.S.
- The 12th circuit is composed of Manatee, Sarasota, and DeSoto Counties. s. 26.021(12), F.S.
- The 13th circuit is composed of Hillsborough County. s. 26.021(13), F.S.
- The 20th circuit is composed of Charlotte, Collier, Glades, Hendry, and Lee Counties. s. 26.021(20), F.S.

Third District -- Circuits 11 and 16. s. 35.04, F.S.

- The 11th circuit is composed of Dade County. s. 26.021(11), F.S.
- The 16th circuit is composed of Monroe County. One judge in the circuit shall reside in the middle or upper Keys. There shall be no residency requirement for any other judge in the circuit. s. 26.021(16), F.S.

Fourth District -- Circuits 15, 17, and 19. s. 35.042, F.S.

- The 15th circuit is composed of Palm Beach County. s. 26.021(15), F.S.
- The 17th circuit is composed of Broward County. s. 26.021(17), F.S.
- The 19th circuit is composed of Indian River, Martin, Okeechobee, and St. Lucie Counties. s. 26.021(19), F.S.

Fifth District -- Circuits 5, 7, 9, and 18. s. 35.043, F.S.

- The 5th circuit is composed of Citrus, Hernando, Lake, Marion, and Sumter Counties. Two of the circuit judges authorized for the fifth circuit shall reside in either Citrus,

Hernando, or Sumter County, and neither of such two judges shall reside in the same county. s. 26.021(5), F.S.

- The 7th circuit is composed of Flagler, Putnam, St. Johns, and Volusia Counties. One judge shall reside in Flagler County; two judges shall reside in Putnam County; two judges shall reside in St. Johns County; and three judges shall reside in Volusia County. There shall be no residency requirement for any other judges in the circuit. s. 26.021(7), F.S.
- The 9th circuit is composed of Orange and Osceola Counties. s. 26.021(9), F.S.
- The 18th circuit is composed of Brevard and Seminole Counties. s. 26.021(18), F.S.

Apparently, the bill will be phased-in; as the term of each sitting Supreme Court justice and district court of appeal judge ends, each will presumably stand for re-election instead of retention.

Also, as no changes are made to the provisions for appointment to fill a vacancy in any judicial position, presumably, this will continue to be the practice.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Article XI, section 5 of the Florida Constitution requires each proposed amendment to the Constitution to be published in a newspaper of general circulation in each county two times

prior to the general election. The Division of Elections estimates that the cost to advertise each amendment will be \$35,000, depending on the length of the proposed amendment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Article V Task Force was created by the Florida Legislature in 1994 to review specific issues related to both the judicial branch and the administration of justice. Florida Article V Task Force, Final Report (December 1995). The Task Force was composed of 23 members, including judges from each level of the judicial system, lawyers, community leaders, legislators, the Attorney General, and various other constitutional officers. *Id.* at 3. From August, 1994, through December, 1995, the full Task force met 18 times at locations throughout the state. *Id.*

One of the issues the Task Force was directed to study was the selection process for judges. *Id.* at 15. The Task Force was to determine whether the process produced a judiciary that reflects the diversity of the state and results in the most qualified candidates serving on the bench. *Id.* The Task Force summarized the arguments for and against merit selection and retention. *Id.* at 17. The arguments supporting the process were:

- Enhances the perception of an impartial judiciary.
- Reduces the need for campaign fund raising.
- Enhances the quality of the bench as indicated by the fact that judges placed on the bench by merit selection and retention consistently rank higher on bar judicial polls.
- Reduces the likelihood of disciplinary actions against judges as measured by the fact that appointed judges statistically have a lower chance of being disciplined by the Judicial Qualifications Commission than elected judges.
- Requires all judges to face the voters in a retention election.
- Reduces the likelihood of judicial brokering.

Id.

The arguments against merit selection and retention were:

- Requires minorities and others to be subject to a Governor's benevolence.
- Requires elections, but just in a different form.
- Requires a strong and proactive Judicial Qualifications Commission.
- Forces citizens to lose their right to select their own judges.
- Eliminates elections as a good method to keep a check on a judge.

Id.

As to whether the judiciary reflected the diversity of the state, the Task Force found that it did not reflect the ethnic, racial, and gender diversity of the general population of the state. *Id.* at 18. It did, however, closely parallel the diversity of the population of The Florida Bar. *Id.* The statistics

examined by the Task Force showed that most minority judges reached the county or circuit bench by appointment. *Id.* at 19.

Statistics examined by the Task Force on discipline of judges indicated that elected judges are disciplined much more frequently than appointed judges. *Id.* From 1970 through 1994, approximately 86 judges were disciplined by the Judicial Qualifications Commission. *Id.* Fifty-nine of the judges, approximately 69 percent, were elected judges. *Id.*

The Task Force recommended extending the merit selection and retention system to the trial court judges. *Id.* The Task Force determined that this would enhance diversity of the trial bench and obtain the most qualified candidates. *Id.* at 20. The Task Force based the recommendation on four factors. *Id.* First, the statistics support the finding that the appointment process results in more minority and women judges reaching the bench. Second, under a merit selection system, the candidates are screened by the judicial nominating commissions and the top three candidates are forwarded to the Governor. *Id.* In contrast, the election process does not involve any screening process and persons may be elected in a random manner or based on popularity. *Id.* Additionally, elected judges are historically more likely to be disciplined. *Id.* Third, the Task Force distinguished judges from other elected officials in that judges are not elected to represent a constituency, and the election process serves to detract from the image of the judiciary. *Id.* In particular, the Task Force found that soliciting funds could lead to a perception of bias or impropriety. *Id.* Finally, the Task Force determined that competitive elections may discourage competent, qualified attorneys from seeking office. *Id.*

VIII. Amendments:

None.